

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-183676

DATE: January 29, 1976

MATTER OF: P. L. Larsen Company

DIGEST:

In view of disparity between the low bid and other bid prices submitted and the recognized deficiency in the Government estimate, contracting officer was on constructive notice of possible mistake in bid and correction should be allowed.

Project No. 6410-5930 was issued by the Rocky Mountain Regional Office of the National Park Service, Department of the Interior, for various work in the Glen Canyon National Recreation Area. The following three bids were received by the bid opening date:

P. L. Larsen Company	\$490,464.70
Slavin and Shafer	589,653.00
Nelson Construction	807,285.00

Shortly after the June 12, 1974, bid opening the contracting officer was advised by P. L. Larsen that prior to bid opening it had amended its bid price by telegram. This telegram, wherein the price bid on schedule item 1 was increased by \$132,756, was received by the contracting officer on June 13, 1974. Notwithstanding the facts that prior to any award P. L. Larsen advised that it could not accept a contract at the original bid price due to the "irreparable injury and loss and unjustifiable hardship" it would cause to that firm and appealed to the contracting officer for relief from the award it believed he would make (an appeal that was rejected on July 9 as premature), the contracting officer maintained his position that a price modification could not be granted inasmuch as the modification was received late through no fault of the Government. Award was made to P. L. Larsen on August 9, 1974, at the price of \$488,464.70 (item 14 was not included in the contract).

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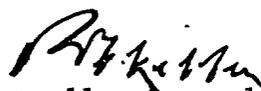
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Subsequent to the award, specifically on August 12, 1974, P. L. Larsen lodged another appeal with the contracting officer stating that it had originally put too much faith in the Government estimate of the cost for the job only to discover that it had erred in its computations by \$132,756 and that without this increase in price it would be unable to complete the contract without great financial loss and/or possible ruin. By letter of January 7, 1975, the contracting officer denied the appeal on the bases that the P. L. Larsen bid modification was received late and, therefore, could not be considered and that the contracting officer was not on notice of a mistake in bid prior to award of the contract because of the small difference between the Government estimate of \$480,379 (this estimate resulted after bid opening when the original Government estimate of \$369,522 was revised due to the disparity between it and the bid prices received) and the original P. L. Larsen bid price. It was felt by the contracting officer that the P. L. Larsen allegation of mistake was not raised until after award.

It is a general rule that a bidder who makes a mistake in its bid which has been accepted in good faith must bear the consequences unless the mistake was mutual or the contracting officer had either actual or constructive notice of the mistake prior to award. 48 Comp. Gen. 672 (1969). In this instance, the contracting officer now believes that under the circumstances recited above he was on constructive notice of the mistake prior to award and, consequently, that correction of the bid should have been permitted.

We agree that the contracting officer was on constructive notice of a possible mistake in bid prior to award. We believe that, taken as a whole, the attempt by P. L. Larsen to timely modify its original bid price, the recognized deficiency in the Government estimate and the fact that the other two bids submitted on the procurement were approximately 20 and 67 percent, respectively, higher than the P. L. Larsen bid, put the contracting officer on notice of a possible mistake, thus requiring verification of the low bid. Relief may therefore be granted.

Since the contract has been substantially completed, rescission is no longer feasible. We, therefore, would interpose no objection to increased payment to reflect any established error not to exceed the price of the next otherwise acceptable low bid.


Deputy Comptroller General
of the United States